

Exhibit A

Occidental v. 21st Century Fox

Status Conference 2/16/2022

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----x

OCCIDENTAL CHEMICAL
CORPORATION,

Civil Action No.
2:18-11273(MCA)(JAD)

Plaintiff,

v.

STATUS CONFERENCE

21ST CENTURY FOX AMERICA,
INC., et al.

COPY

Defendants.

-----x

B E F O R E:

THOMAS P. SCRIVO, ESQ. Special Discovery Master

O'Toole Scrivo Fernandez Weiner Van Lieu, LLC
14 Village Park Road
Cedar Grove, New Jersey 07009

TRANSCRIPT OF CONFERENCE as
reported by NANCY C. BENDISH, Certified Court
Reporter, RMR, CRR and Notary Public of the
States of New Jersey and New York, conducted
virtually via Zoom Videoconference on Wednesday
February 16, 2022, commencing at 1:00 p.m.

<p style="text-align: right;">Page 18</p> <p>1 impact of the resolutions, but obviously we're 2 going to move forward with the agenda items that 3 have been laid out for the conference today. 4 The first of which, though, is the 5 potential settlements. So it would be helpful, 6 I know certain individual defendants, as well as 7 Jeff, have provided information regarding 8 settlements in principle, so if there could be a 9 little bit more information, and obviously if it 10 can't be shared that's fine as well, but 11 whatever information is the latest and greatest 12 as it relates to settlements would be helpful 13 for me to know. 14 MR. TALBERT: Sure, Special 15 Master. This is Jeff Talbert for the Small 16 Parties Group. 17 We think it's a very important 18 development that we have in terms of reporting 19 out. We sent a notification to Magistrate 20 Wettre to let her know that discussions with the 21 United States have moved beyond simply 22 discussions, to the point where we have reached 23 an agreement in principle with a significant 24 number of parties. I am not at liberty to say 25 the specific number at this time. That may</p>	<p style="text-align: right;">Page 20</p> <p>1 proceed through to making a determination 2 regarding whether the settlement is fair and 3 reasonable and consistent with the statute, 4 CERCLA here. 5 One of the things we think is just 6 important for you to understand, and I'm going 7 to just share my screen, is that the reason why 8 this is so important in this context is that 9 statutorily, under CERCLA, parties that resolve 10 their liability to the United States in an 11 administrative or judicially approved 12 settlement, they effectively get protection from 13 contributions regarding matters addressed in the 14 settlement. 15 So, in this case, you know, we 16 anticipate that the matters addressed will cover 17 a significant amount of claims in the case, 18 parties and otherwise, and effectively lead to 19 an end of this litigation. 20 It also will have an impact on any 21 parties that do not settle because it is the 22 result of a significant amount of process, about 23 a three-year allocation that you've been getting 24 updates on as we've received information. And, 25 you know, that will effectively provide a</p>
<p style="text-align: right;">Page 19</p> <p>1 change. There are parties that are joining the 2 settlement or being added to it, so it's not 3 exactly a static number at this point in time. 4 I have coordinated with the United 5 States to see what terms we are able to disclose 6 at this point in time, and they have asked that 7 we, you know, for the moment, not disclose the 8 specific settlement terms as we continue working 9 with them. They are going to think about what 10 can be disclosed to the Court. 11 Just so you are aware, and it 12 might be helpful, the normal process that the 13 United States follows in terms of negotiations 14 and settlements in these types of cases is that 15 it will reach an agreement in principle, and 16 then the parties will move forward with the 17 drafting of a settlement document, which they 18 refer to as a consent decree. And then the 19 consent decree is lodged with the Court, 20 typically, and then at that point in time the 21 public gets a period of time, in this case that 22 might be extended to something like 60 days, but 23 gets a period of time to make comments on the 24 settlement. And then there's typically a motion 25 to enter and the Court then decides how best to</p>	<p style="text-align: right;">Page 21</p> <p>1 framework that the Court can use to resolve 2 other parties' potential responsibility, if it 3 finds that that's fair and reasonable. 4 And then in addition to that, in 5 order to maintain a claim in CERCLA, the 6 plaintiff has to show that it has spent more 7 money than its fair share. So in this case, 8 thus far Occidental has reported in its 9 interrogatory responses, Interrogatory 22, that 10 it's paid about 75 million in costs associated 11 with this site. 12 As you can see from their recent 13 offer to the United States of 441 million, which 14 relates to the upper portion of the river, that 15 75 million is likely significantly less than 16 their fair share. You know, we assert that 17 their fair share is closer to 100 percent of the 18 responsibility at the site and in the Spill Act 19 litigation I will note that Occidental settled 20 for about 90 percent. So here that would be 21 about 1.8 billion if you were going to, you 22 know, using 2 billion as a rough number, and 23 potentially more than that. 24 So we think at this point there 25 are several ways in which the settlement will no</p>

<p style="text-align: right;">Page 46</p> <p>1 forward voluntarily, would cooperate 2 voluntarily, would perform an advance to clean 3 up, and simultaneously hold other parties 4 accountable. And we do not think that the 5 purported settlement the defendants say EPA is 6 trying to enter into with them could ever 7 interrupt that right on the part of OxyChem. 8 We are, as the Special Master 9 knows, OxyChem has been assiduous in trying to 10 address the situation of the local governments. 11 I will say again what I say every time: We did 12 not join them; the defendants did. We offered 13 to sever them; the defendants refused. We 14 offered to completely set them aside if the 15 defendants would do the same; the defendants 16 refused. 17 OxyChem cannot be punished now for 18 that practice and that refusal of the 19 defendants. OxyChem has a right to move forward 20 with its case. And that's all we're here about 21 today, Special Master. There isn't a stay, we 22 have work that needs to be done. If and when a 23 settlement is issued, the Court can decide what, 24 if any, impact it has. Because right now, as 25 Mr. Gilezan said, until you see the terms, you</p>	<p style="text-align: right;">Page 48</p> <p>1 most orderly way possible, might it not be a 2 pathway that if we did stay the case so there 3 wouldn't be the risks of discovery and all the 4 other tactics that could be employed in the 5 litigation, to stay the case and then work out 6 some arrangement with EPA, with the parties that 7 participated in that allocation for it then to 8 be disclosed and for us then to be in a much 9 more informed position to work everything out? 10 I just don't mean to make it too 11 Simple Simon, but I'm saying wouldn't that be 12 another great benefit to just taking a pause 13 right now to really help us all try and figure 14 out the best way to resolve this case without 15 burdens to anybody, no less the public entities. 16 MS. PATRICK: Special Master -- 17 MR. SCRIVO: No, I'm taking that 18 as a rhetorical question to you, Kathy, that 19 Grant is free to take offline, have those 20 discussions with you, and if you all reach an 21 agreement as to this issue prior to the seven 22 days, nothing would make me happier. 23 However, I have the submissions, 24 you've all agreed that I have everything I need 25 on this, and we'll proceed with the rest of the</p>
<p style="text-align: right;">Page 47</p> <p>1 don't know what they're going to purport to bar, 2 and until you know how much they pay, Judge 3 Arleo isn't going to be able to decide whether 4 the claims should be barred. 5 In the meantime, what you do know 6 is that if the United States were a party, they 7 would not be permitted to advocate for a stay on 8 this circumstance and you certainly should not, 9 in a case where the United States is not a 10 party, stay the case for up to what you've 11 heard, if you put their time frames together, 12 would be a year or more. Evidence will be lost, 13 time will be lost. We should move forward. 14 MR. GILEZAN: If I may, Kathy, and 15 Jeff, I know, it looks like you wanted to jump 16 in, but I just have one quick comment/question, 17 if I may, going back to Kathy. 18 Thinking as we are both in the 19 same position, right, of not knowing, since the 20 third-party defendants weren't in that 21 allocation either, for other reasons than since 22 we didn't affirmatively elect not to 23 participate, we weren't invited. But wouldn't 24 it be helpful, since we all collectively in this 25 case, want to reach a fair resolution in the</p>	<p style="text-align: right;">Page 49</p> <p>1 agenda items, bearing in mind that this specter, 2 this is, the specter of this issue hangs over 3 us, but we're going to continue to plow through 4 these issues for the purpose of this monthly 5 conference. 6 Second issue is with regard to the 7 status of depositions and the deposition 8 protocol. I'm not going to recite the history 9 about what we attempted to come to resolution 10 on, how we attempted to get closure on the issue 11 of deposition protocols which, frankly, seems 12 fairly straightforward in most cases, but yet 13 for some reason the ability to agree on these 14 issues has eluded the parties up to this point. 15 If I can -- someone can in a very, 16 very brief way, putting aside the timing of the 17 depositions, the issue of the stay and whether 18 it's going to affect the depositions or not, 19 could someone articulate for me what are the 20 principal issues that you have disagreement on 21 over deposition protocol and COVID protocol 22 issues, because it seems like we are -- we all 23 have lived in this world for the last two years 24 and some of these issues that I see should not 25 be subject to this much disagreement.</p>